Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

W.P.(S) 962 /2005

Petitioner : Rashtriya Koyla Khadan Mazdoor Sangh(INTUC) Through its President, Shri R.S.Jaiswal, Aged 53 years, Churcha Colliery Korea(Chhattisgarh)

Versus

Respondents

1. Desk Officer, Government of India, Ministry of Labour, New Delhi.

2. South Eastern Coal Field Limited Through its Chief General Manager P.O. Baikunthpur, Dist. Korea (C.G).

P.R. No. 973/05 Presented by Shri Sanjay Bhattacharya dated 07-03-05

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(15)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. No. 962/2005 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

18.03.2005

Shri R. Gary Mukhopadhey, counsel for the petitioner.

Heard on admission.

The petitioner a registered Trade Union, raised an industrial dispute against the management of the S.E.C.L. wherein it was alleged that certain discrepancies with respect to promotion of Shri R.S. Jaiswal, Sr. Clerk have taken place. In the conciliation proceedings, this stand was taken that the management while giving promotion to its employees has not followed the norms/rules of the cadre scheme and promoted the juniors of Shri R.S. Jaiswal by superceding him and has deprived Shri R.S. Jaiswal, from the fruits of promotion inspite of the fact that Mr. Jaiswal was eligible for the same.

When no amicable settlement was arrived at, the appropriate Government referred the dispute for its lawful adjudication before the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur. A copy of reference has been filed as Annexure-P/2. The schedule of the reference is as under:-

> *"Whether the action of the Chief General Manager, Baikunthpur Area of SECL, in not giving notional seniority to Sh. R.S. Jaiswal in Clerical Grade-I, with retrospective effect from 1.4.1986 and in Sr. Clerk, with retrospective effect from 1/6/1991 and promotion with retrospective effect is legal and justified? If not, to what relief the workman is entitled?"*

GRPRJ—FS/350—12/2000—50,000.

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After this reference an application/representation dated 4.12.2004 was sent by the petitioner to the respondent no. 1 for the purpose of certain corrections.

Learned counsel for the petitioner submits that the word notional before the word seniority in the schedule of reference has wrongly been added and the petitioner prayed for deletion of this word 'Notional'. He further submits that the Union apprehends that if the reference is allowed in favour of Shri R.S. Jaiswal, his seniority will be notional seniority and he will not be able to get benefit in consequence of fixation of the seniority as per reference.

I have heard learned counsel for the petitioner at length and also perused the reference order dated 4.10.2002 (Annexure-P/2).

After bare perusal of the order dated 4.10.2002, it is apparent on record that in fact, the matter of "promotion with retrospective effect" is under reference. The last two lines clearly indicate about the same which are quoted as under:-

> *".....Promotion with retrospective effect is legal and justified? If not, to what relief the workman is entitled?"*

It is a settled principle of law that the industrial Tribunal has jurisdiction to construe the reference so as to bring out the real dispute for its decision. The Tribunal has not only such powers but duty is cast on it to

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find out what was the real dispute which was referred to it and to decide it and for that purpose, it has powers to look into the pleadings of the parties.

It has been held by the Hon'ble Apex Court in ***A.I.R. 1963 SC 569 (Express Newspapers (P.) Ltd. –Vs.- The Workers and others)*** that appropriate Government should frame order of reference carefully giving no room for ambiguity or controversy but the Courts must attempt to construe the reference not too technically or in a pedantic manner but fairly and reasonably. Not only this the Hon'ble Apex Court further held in the matter of ***Jaipur Udyog Ltd. –Vs.- C.W.K. Sangh reported in A.I.R. 1972 SC 1352*** that the scope of reference has to be gathered from the circumstances preceding the Government order.

In fact, order of reference is to be given a plain meaning. The Tribunals are to judge & construe nature and character of reference and in fact, the pith and substance of reference are to be focused and a decision is to be rendered on the point in issue.

If we examine the reference with the aforesaid backgrounds, we will find that in fact, it covers entire matter of promotion of the employee. The said matter is under reference on the basis of seniority from a particular date. Using word like 'notional' does not change the subject of reference which is in fact, the matter of "promotion with retrospective effect" of the employee which also covers the matter of seniority which is certainly a circumstance preceding the order of reference. If the case "promotion with

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आदेश पत्रक (पूर्वानुबद्ध)

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	 retrospective effect" will be adjudicated, it shall cover the entire subject of reference. In the opinion of this Court, there appears to be no reason to interfere with the matter at this stage. The petition is dismissed at the motion stage itself. No orders as to costs. Certified copy as per rules. **Sd/-** **Sunil Kumar Sinha** **Judge**	

vatti

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